

Sheehan & Associates, P.C.

505 Northern Blvd Ste 311, Great Neck NY 11021-5101

tel. 516.303.0552 fax 516.234.7800

spencer@spencersheehan.com

---

February 14, 2020

District Judge P. Kevin Castel  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Re: 1:19-cv-09677-PKC  
Barreto v. Westbrae Natural, Inc.

Dear District Judge Castel:

This office represents the plaintiff. On Monday, February 10, 2020, defendant served and filed a letter seeking a pre-motion conference to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). In accordance with your Honor's Individual Practices ("Individual Rules"), plaintiff is required to serve and file a letter response within four business days.

Consistent with the rules and practices of the Court, which typically consider service of a defendant's pre-motion letter timely service under Rule 12 if served within the time required by the Rule, plaintiff will "amend its pleading once as a matter of course" within 21 days "after service of [defendant's] motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B); *Solis v. McAleenan*, No. 19-cv-5383 (S.D.N.Y. Dec. 5, 2019) ("Under Rule 15(a)(1)(B), a plaintiff has 21 days after the service of a motion under Rule 12(b) to amend the complaint once as a matter of course."); *Martinez v. LVNV Funding, LLC*, No. 14-cv-00677, 2016 WL 5719718, at \*3 (E.D.N.Y. Sept. 30, 2016); *M.E.S., Inc. v. Liberty Mut. Sur. Group.*, No. 10-cv-0798, 2014 WL 46622 (E.D.N.Y. Jan. 6, 2014), \*2 (noting that a plaintiff's amendment as of right in response to defendant's pre-motion letter seeking dismissal "allow[s] for the more efficient use of the Court's time and resources because the Court need only meet with the Parties once...and the need for the motion may be obviated if the amended pleading deals with Defendants' concerns.").

Plaintiff will file an amended complaint on or before Monday, March 2, 2020, 21 days after defendant's letter-motion was served. Fed. R. Civ. P. 6(a)(1)(A) (excluding "the day of the event that triggers the period"); 6(a)(1)(C) (where the last day of the period is "a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday."); Fed. R. Civ. P. 15(a)(1)(B). Thank you.

Respectfully submitted,

/s/Spencer Sheehan  
Spencer Sheehan

Certificate of Service

I certify that on February 14, 2020, I served or transmitted the foregoing by the method below to the persons or entities indicated, at their last known address of record (blank where not applicable).

	CM/ECF	First-Class Mail	Email
Defendant's Counsel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Plaintiff's Counsel</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

/s/ Spencer Sheehan  
Spencer Sheehan